

# NONCOMMERCIAL BROADCASTING FREEDOM OF EXPRESSION ACT OF 2000

JUNE 9, 2000.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

## R E P O R T

together with

## MINORITY VIEWS

[To accompany H.R. 4201]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill  
(H.R. 4201) to amend the Communications Act of 1934 to clarify  
the service obligations of noncommercial educational broadcast sta-  
tions, having considered the same, report favorably thereon with an  
amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Noncommercial Broadcasting Freedom of Expression Act of 2000”.

### SEC. 2. FINDINGS.

The Congress finds the following:

(1) In the additional guidance contained in the Federal Communication Commission’s memorandum opinion and order in WQED Pittsburgh (FCC 99–393), adopted December 15, 1999, and released December 29, 1999, the Commission attempted to impose content-based programming requirements on noncommercial educational television broadcasters without the benefit of notice and comment in a rulemaking proceeding.

(2) In doing so, the Commission did not adequately consider the implications of its proposed guidelines on the rights of such broadcasters under First Amendment and the Religious Freedom Restoration Act.

(3) Noncommercial educational broadcasters should be responsible for using the station to primarily serve an educational, instructional, cultural, or religious purpose in its community of license, and for making judgments about the types of programming that serve those purposes.

(4) Religious programming contributes to serving the educational and cultural needs of the public, and should be treated by the Commission on a par with other educational and cultural programming.

(5) Because noncommercial broadcasters are not permitted to sell air time, they should not be required to provide free air time to commercial entities or political candidates.

(6) The Commission should not engage in regulating the content of speech broadcast by noncommercial educational stations.

### SEC. 3. CLARIFICATION OF SERVICE OBLIGATIONS OF NONCOMMERCIAL EDUCATIONAL OR PUBLIC BROADCAST STATIONS.

(a) SERVICE CONDITIONS.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

“(m) SERVICE CONDITIONS ON NONCOMMERCIAL EDUCATIONAL AND PUBLIC BROADCAST STATIONS.—

“(1) IN GENERAL.—A nonprofit organization shall be eligible to hold a noncommercial educational radio or television license if the station is used primarily to broadcast material that the organization determines serves an educational, instructional, cultural, or religious purpose (or any combination of such purposes) in the station’s community of license, unless that determination is arbitrary or unreasonable.

“(2) ADDITIONAL CONTENT-BASED REQUIREMENTS PROHIBITED.—The Commission shall not—

“(A) impose or enforce any quantitative requirement on noncommercial educational radio or television licenses based on the number of hours of programming that serve educational, instructional, cultural, or religious purposes; or

“(B) impose or enforce any other requirement on the content of the programming broadcast by a licensee, permittee, or applicant for a noncommercial educational radio or television license that is not imposed and enforced on a licensee, permittee, or applicant for a commercial radio or television license, respectively.

“(3) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as affecting—

“(A) any obligation of noncommercial educational television broadcast stations under the Children’s Television Act of 1990 (47 U.S.C. 303a, 303b); or

“(B) the requirements of section 396, 399, 399A, and 399B of this Act.”.

(b) POLITICAL BROADCASTING EXEMPTION.—Section 312(a)(7) of the Communications Act of 1934 (47 U.S.C. 312(a)(7)) is amended by inserting “, other than a noncommercial educational broadcast station,” after “use of a broadcasting station”.

(c) AUDIT OF COMPLIANCE WITH DONOR PRIVACY PROTECTION REQUIREMENTS.—Section 396(l)(3)(B)(ii) of the Communications Act of 1934 (47 U.S.C. 396(l)(3)(B)(ii)) is amended—

(1) in subclause (I), by inserting before the semicolon the following: “, and shall include a determination of the compliance of the entity with the requirements of subsection (k)(12)”; and

(2) in subclause (II), by inserting before the semicolon the following: “, except that such statement shall include a statement regarding the extent of the compliance of the entity with the requirements of subsection (k)(12)”.

(d) IMPLEMENTATION.—Consistent with the requirements of section 4 of this Act, the Federal Communications Commission shall amend sections 73.1930 through 73.1944 of its rules (47 CFR 73.1930–73.1944) to provide that those sections do not apply to noncommercial educational broadcast stations.

#### SEC. 4. RULEMAKING.

(a) LIMITATION.—After the date of enactment of this Act, the Federal Communications Commission shall not establish, expand, or otherwise modify requirements relating to the service obligations of noncommercial educational radio or television stations except by means of agency rulemaking conducted in accordance with chapter 5 of title 5, United States Code, and other applicable law (including the amendments made by section 3).

(b) RULEMAKING DEADLINE.—The Federal Communications Commission shall prescribe such revisions to its regulations as may be necessary to comply with the amendment made by section 3 within 270 days after the date of enactment of this Act.

### PURPOSE AND SUMMARY

The purpose of H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000, is to ensure that the Federal Communications Commission (FCC) does not engage in regulating the content of speech broadcast by noncommercial educational stations, except by means of a formal agency rulemaking.

### BACKGROUND AND NEED FOR LEGISLATION

Since 1952, the FCC has reserved a limited number of television channels for educational broadcasters, known as Non-Commercial Educational channels (NCEs). Under Commission rules (47 CFR §73.621(a)), applicants seeking to use NCE-reserved television channels are required to demonstrate that their programming will be “primarily educational” in nature and thus serve the educational purpose for which the channel was reserved. While many religious broadcasters hold traditional commercial broadcast licenses, some religious broadcasters have requested that they be certified as NCE-TV broadcasters and thereby, become subject to the standards of an NCE television station.

On December 29, 1999, the FCC issued a memorandum opinion and order in the WQED Pittsburgh decision (FCC 99–393) approving the application for an assignment of a license. However, this order included a section entitled “additional guidance” regarding noncommercial educational broadcasting. This additional guidance essentially attempted to impose content-based programming requirements on noncommercial educational television broadcasters in three ways.

First, it quantified the obligations of noncommercial licensees to “primarily serve the educational needs of the community” by requiring that more than half of the hours of programming aired on a reserve channel must primarily serve an educational, instructional or cultural purpose in the station’s community of license.” Second, the “additional guidance” concluded that “a program must have as its primary purpose service to the educational, instruc-

tional or cultural needs of the community” in order to be counted toward this new benchmark. Third, it singled out religious programming and essentially distinguished between programming that teaches about religion (which would count toward the new benchmark) and programming “devoted to religious exhortation, proselytizing, or statements of personally-held religious views and beliefs” which would generally not qualify. The memorandum opinion and order explicitly found that church services do not serve the educational and cultural needs of the general public.

Controversy soon arose from many religious broadcasters about the policy implications of this additional guidance section, as well as about the process by which it was announced by the Commission. Critics, including several newspaper editorial boards across the country, questioned the FCC’s judgment in the decision. Congressional pressure increased, including the introduction of H.R. 3525, the Religious Broadcasting Freedom Act, with 59 original cosponsors, which set aside the FCC’s Order. On January 28, 2000, the Commission issued an order vacating the “additional guidance” section on the original decision.

However, questions remained as to whether the FCC’s December 29th order was instituting new policy, or simply a clarification of previous policy that had been implemented in the past. Members continued to insist that, if the December order was only a clarification of previous policy, then vacating that clarification would not solve the underlying problem with the Commission’s interpretation of the law. H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000 seeks to answer these policy questions in order to avoid future confusion regarding the policy.

#### HEARINGS

The Subcommittee on Telecommunications, Trade and Consumer Protection held a hearing on H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000 on April 13, 2000. The Subcommittee received testimony from: Mr. Mark Dreistadt, Vice President of Administration and Finance, Cornerstone Television; The Honorable Harold Furchtgott-Roth, Commissioner, Federal Communications Commission; Mr. E. Brandt Gustavson, L.L.D., President, National Religious Broadcasters; The Honorable Gloria Tristani, Commissioner, Federal Communications Commission; and Mr. Don Wildmon, President, American Family Association.

#### COMMITTEE CONSIDERATION

On May 10, 2000, the Subcommittee on Telecommunications, Trade and Consumer Protection met in open markup session and approved H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000 for Full Committee consideration, as amended by a record vote of 11 yeas and 5 nays. On May 17, the Full Committee met in open markup session and ordered H.R. 4201 reported, with an amendment, by a voice vote.

#### COMMITTEE VOTES

Clause 3(b) of Rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no

record votes taken in connection with ordering H.R. 4201 reported. A motion by Mr. Bliley to order H.R. 4201 reported to the House, without amendment, was agreed to by a voice vote.

The following amendments were agreed to by a voice vote:

An amendment by Mr. Oxley, #2, clarifying that the requirements for non-commercial educational licensees under section 396 of the Communications Act of 1934 (47 U.S.C. § 396) are not affected by H.R. 4201; and,

An amendment by Mr. Oxley, #3, requiring an independent biennial audit of public broadcasting stations' compliance with the donor privacy protections set forth in section 396(k)(12) of the Communications Act of 1934 (47 U.S.C. § 396(k)).

The following amendment was not agreed to by a record vote of 14 yeas and 23 nays. The names of Members voting for and against follow:

An amendment by Mr. Markey, #1, allowing only nonprofit educational organizations eligibility to hold noncommercial licenses and establishing the principle that broadcast material must serve an educational, instructional, cultural or educational religious purpose in the station's community of license.

# Committee on Commerce

## One Hundred Sixth Congress

### Record Vote No. 33

**Bill:** H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000

**Amendment or Motion:** Amendment by Mr. Markey, #1.

**Disposition:** NOT AGREED TO, by a record vote of 14 yeas and 23 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman			
Mr. Oxley		X		Mr. Markey	X		
Mr. Bilirakis		X		Mr. Hall			
Mr. Barton				Mr. Boucher			
Mr. Upton		X		Mr. Towns			
Mr. Stearns		X		Mr. Pallone			
Mr. Gillmor		X		Mr. Brown			
Mr. Greenwood		X		Mr. Gordon			
Mr. Cox				Mr. Deutsch	X		
Mr. Deal		X		Mr. Rush			
Mr. Largent				Mrs. Eshoo	X		
Mr. Burr		X		Mr. Klink	X		
Mr. Bilbray		X		Mr. Stupak			
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske				Mr. Sawyer	X		
Mr. Norwood		X		Mr. Wynn	X		
Mr. Coburn				Mr. Green	X		
Mr. Lazio		X		Mrs. McCarthy	X		
Mrs. Cubin		X		Mr. Strickland			
Mr. Rogan				Mrs. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg		X		Mrs. Capps	X		
Mr. Pickering		X					
Mr. Fossella		X					
Mr. Blunt		X					
Mr. Bryant		X					
Mr. Ehrlich		X					

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

## COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 25, 2000.*

Hon. TOM BLILEY,  
*Chairman, Committee on Commerce, House of Representatives,*  
*Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4201, the Noncommercial Broadcasting Freedom of Expression Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

BARRY B. ANDERSON,  
(For Dan L. Crippen, Director).

Enclosure.

*H.R. 4201—Noncommercial Broadcasting Freedom of Expression Act of 2000*

H.R. 4201 would limit the Federal Communications Commission's (FCC's) authority to regulate the content of noncommercial educational broadcast services. For example, the commission could not require such stations to broadcast a minimum number of hours of educational or similar programming. Likewise, it could not set

standards for the content of noncommercial broadcasts that differ from the standards applicable to commercial stations. (The bill would affirm, however, that such stations must continue to comply with statutory restrictions regarding advertising, political editorials, and children's television programming.) Finally, H.R. 4201 would require that the biannual audits of the Corporation for Public Broadcasting include reports on its compliance with statutory restrictions on disclosing the identity of contributors and donors.

Based on information from the FCC, CBO estimates that implementing this bill would have no significant effect on the commission's workload or its discretionary spending. For purposes of this estimate, CBO assumes that the legislation would have little, if any, effect on the number of applications for new noncommercial stations. Hence, we estimate that enacting H.R. 4201 would have no significant effect on offsetting receipts from the FCC's auction of spectrum licenses. Because the bill could affect direct spending, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible.

H.R. 4201 contains no intergovernmental or private-sector mandates as defined in the Unfunded mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact is Kathleen Gramp. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short Title*

This section provides the short title of the legislation, the "Non-commercial Broadcasting Freedom of Expression Act of 2000."



## *Section 2. Findings*

Section 2 sets forth certain findings.

## *Section 3. Clarification of Service Obligations of Noncommercial Educational or Public Broadcast Stations*

Section 3(a)(1) amends section 309 of the Communications Act of 1934 (47 U.S.C. § 309) by adding a new subsection (m). This new subsection establishes the eligibility requirements for nonprofit organizations to hold noncommercial radio or television licenses. Under this section, these licenses must be used to primarily broadcast material that the organization determines serves an educational, instructional, cultural or religious purpose in the station's community of license. This new section also mandates that such determination by the broadcaster may not be arbitrary or unreasonable. The Committee does not intend to favor material with religious purposes over any other type of educational, instructional or cultural programming, but rather to allow religious content as one type of acceptable material for broadcast for noncommercial stations.

Section 3(a)(2) provides that the FCC is prohibited from establishing additional content-based requirements on noncommercial educational radio or television licenses. These requirements include, but are not necessarily limited to: quantitative requirements on the number of hours of programming that serves educational, instructional, cultural or religious purposes; or, any other requirements on a noncommercial educational radio or television licensee, permittee, or applicant that is not imposed or enforced on a commercial radio or television licensee, permittee or applicant.

Section 3(a)(3) clarifies that nothing in subsection (a) is to be construed as affecting any obligation of noncommercial educational television broadcast stations under the Children's Television Act of 1990 (47 U.S.C. §§ 303A, 303B) or the requirements of sections 396, 399, 399A, and 399B of the Communications Act of 1934 (47 U.S.C. §§ 396, 399, 399A, 399B). The Committee intends to make clear with this subsection that the requirements for the Corporation for Public Broadcasting, particularly; the biennial audit by independent certified public accountants, the prescribed accounting records will not be affected in any way. Furthermore, the Committee intends to ensure that the noncommercial educational broadcasting rules for supporting or opposing political candidates, and the underwriting/advertising activities also are not affected by this subsection. Furthermore, the Committee does not intend the displacement of any existing public broadcast station from their current spectrum allocation following enactment of this legislation.

Section 3(b) amends section 312(a)(7) of the Communications Act of 1934 (47 U.S.C. § 312(a)(7)) by clarifying that a noncommercial educational broadcast station may not have its license revoked for failure to allow reasonable amounts of time to candidates for Federal elective offices. Because commercial stations are subject to such rules, the Committee intends to make statutorily clear that noncommercial educational stations, are not included as well.

Section 3(c) amends section 396(l)(3)(B)(iii) of the Communications Act of 1934 (47 U.S.C., § 396(l)(3)(B)(iii)) to include in the biennial audits of the Corporation for Public Broadcasting by independent accountants, a determination of compliance with the donor

privacy protection requirements, laid out in section 396(k)(12) (47 U.S.C., § 396(k)(12)). The donor privacy protection requirements set forth that public broadcasting entities that disclose contributor or donor names must inform the donor that personal information may be disclosed to a third party, give the donor the opportunity to opt out of such a disclosure before the fact, and explain how the donor may exercise that nondisclosure option. The requirements further prohibit any public broadcaster from renting or exchanging donor names to any political candidate, party or committee. The Committee intends that biennial audits of public broadcasters include a determination of compliance with these requirements, in addition to the other areas of auditor review.

Section 3(d) directs the FCC to amend sections 73.1930 through 73.1944 of its rules (47 CFR 73.1930–73.1944) to provide that those sections do not apply to noncommercial educational broadcast stations.

#### *Section 4. Rulemaking*

Section 4 establishes that the FCC may not modify any requirements to the service obligations of noncommercial educational radio or television stations without conducting a formal rulemaking. Section 4 further prescribes that the FCC make the necessary revisions to its regulations, in order to comply with section 3 within 270 days after the date of enactment.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### COMMUNICATIONS ACT OF 1934

\* \* \* \* \*

## TITLE III—PROVISIONS RELATING TO RADIO

### PART I—GENERAL PROVISIONS

\* \* \* \* \*

#### SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) \* \* \*

\* \* \* \* \*

(m) *SERVICE CONDITIONS ON NONCOMMERCIAL EDUCATIONAL AND PUBLIC BROADCAST STATIONS.*—

(1) *IN GENERAL.*—A nonprofit organization shall be eligible to hold a noncommercial educational radio or television license if the station is used primarily to broadcast material that the organization determines serves an educational, instructional, cultural, or religious purpose (or any combination of such pur-

poses) in the station's community of license, unless that determination is arbitrary or unreasonable.

(2) **ADDITIONAL CONTENT-BASED REQUIREMENTS PROHIBITED.**—*The Commission shall not—*

(A) *impose or enforce any quantitative requirement on noncommercial educational radio or television licenses based on the number of hours of programming that serve educational, instructional, cultural, or religious purposes; or*

(B) *impose or enforce any other requirement on the content of the programming broadcast by a licensee, permittee, or applicant for a noncommercial educational radio or television license that is not imposed and enforced on a licensee, permittee, or applicant for a commercial radio or television license, respectively.*

(3) **RULES OF CONSTRUCTION.**—*Nothing in this subsection shall be construed as affecting—*

(A) *any obligation of noncommercial educational television broadcast stations under the Children's Television Act of 1990 (47 U.S.C. 303a, 303b); or*

(B) *the requirements of section 396, 399, 399A, and 399B of this Act.*

\* \* \* \* \*

**SEC. 312. ADMINISTRATIVE SANCTIONS.**

(a) The Commission may revoke any station license or construction permit—

(1) \* \* \*

\* \* \* \* \*

(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station, *other than a noncommercial educational broadcast station*, by a legally qualified candidate for Federal elective office on behalf of his candidacy.

\* \* \* \* \*

**PART IV—ASSISTANCE FOR PUBLIC TELECOMMUNICATIONS FACILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING**

\* \* \* \* \*

**Subpart D—Corporation for Public Broadcasting**

**SEC. 396. DECLARATION OF POLICY.**

(a) \* \* \*

\* \* \* \* \*

(1)(1) \* \* \*

\* \* \* \* \*

(3)(A)

\* \* \* \* \*

(B) Each public telecommunications entity receiving funds under this subpart shall be required—

(i) \* \* \*

(ii)(I) to undergo a biennial audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, which audit shall be in accordance with auditing standards developed by the Corporation, in consultation with the Comptroller General, *and shall include a determination of the compliance of the entity with the requirements of subsection (k)(12); or*

(II) to submit a financial statement in lieu of the audit required by subclause (I) if the Corporation determines that the cost burden of such audit on such entity is excessive in light of the financial condition of such entity, *except that such statement shall include a statement regarding the extent of the compliance of the entity with the requirements of subsection (k)(12); and*

(iii) \* \* \*

\* \* \* \* \*

## MINORITY VIEWS

H.R. 4201, the “Noncommercial Broadcasting Freedom of Expression Act,” purports to correct an unwise decision made by the Federal Communications Commission last year. Unfortunately, the bill itself is controversial, has not been constructed in a bipartisan fashion, and, we believe, takes precisely the wrong approach to dealing with a serious and difficult issue.

In December 1999, the FCC assigned a noncommercial educational broadcast license to a religious programmer, which was, by itself, entirely proper under existing rules. However, the Commission blundered badly when it supplemented its Order with what it called “additional guidance” on what kind of religious programming would be considered by the government to be educational in nature. As one would expect, the agency was attacked from both sides of the political spectrum for injecting itself into the business of evaluating program content.

The Commission’s decision was imprudent at best. But, unlike some other notable FCC foul-ups, the agency admitted its error and did something about it. Less than one month after issuing its “additional guidance,” the Commission officially rescinded that portion of its Order. It would seem that a reasonable response by this Committee would be to declare victory and move on to address other matters important to the people.

But this Committee has developed a penchant for fixing problems that do not exist. Just this week, the House passed a Commerce Committee bill dealing with Internet access charges that can only be described as “virtual legislation.” Kafka himself could only appreciate the manner in which the House fabricated a solution—to an imaginary problem—that was created by a make-believe Congressman. And now, just days later, we address yet another non-existent problem—one that was completely mooted back in January when the FCC repealed its controversial Order.

There is, however, an important distinction to be drawn between these two bills. The Internet bill was completely innocuous. While it was entirely unnecessary, it caused no direct or collateral damage, and the minority was able to support it. On the other hand, the bill before us today is ill-conceived, poorly vetted, and poses a dangerous threat to the future of noncommercial educational broadcasting in this country.

Regrettably, the majority refused to accept a perfecting amendment, offered by Mr. Markey, that simply would have clarified that the primary purpose of a “noncommercial educational license” is to provide educational programming. This important amendment was voted down along party lines.

The Markey amendment was a simple, but significant, clarification. Without this correction, the fundamental nature of public broadcasting is drastically changed. No longer will the availability

of these specially reserved licenses be limited to nonprofit groups with an educational mission. This bill would allow any cult group in America to qualify for a free broadcast license—at the expense of the American taxpayer—and program anything that it sees fit, whether educational or not.

In fact, under the rubric proposed here, Jim Jones would have been eligible for a public broadcasting license simply by asserting a primarily religious purpose. David Koresh could have received this special license to broadcast his doomsday prophecies. The Heaven's Gate cult could have extended its reach significantly if it had been armed with a public broadcasting license in the State of California.

This legislation makes clear that the majority intends to change the fundamental character of public broadcasting in America. No longer will these special channels be required to carry educational material. Any license applicant that regards his or her programming to be “religious” in nature—whether it contains an educational component or not—now will be eligible for a free public television channel.

Moreover, the bill suffers from a multitude of infirmities and inconsistencies. It contains no definition of “nonprofit organization” or “religious broadcasting” to assist in determining who is eligible to receive this special licensee status. The practical effect of these omissions is to extend the eligibility for a public broadcasting station to a sweeping new class of broadcast applicants, many of whom may not be operating in the public interest of their community of license.

The bill contains absolutely no criteria or guidance for the government, *i.e.*, the FCC, to select a licensee from among competing applicants. While the majority ostensibly seeks to prevent the FCC from ever discriminating against a license applicant on the basis of the religious nature of its programming, it may be forcing precisely that result.

Since the longstanding educational programming requirement has been eviscerated by this bill, an applicant now would be eligible on the basis that it intends to broadcast 100% religious programming. Ironically, if two (or more) religious broadcasters are vying for a single license, the FCC now may be forced to choose between them based *solely* on the nature of the religious content.

The government should not be in the position of conferring any special status to one religious broadcaster over another, but that is just what this bill requires. It is clearly an unconstitutional encroachment on the establishment clause of the First Amendment, but the majority insists that it be rushed through the legislative process apparently with little regard for that important matter. In our view, this kind of legislating simply tarnishes the reputation of this great institution, and serves none of us well.

Although we may fundamentally disagree on the underlying need for this legislation, it is unfortunate that the majority refused to work with us in any way to produce a compromise product—one that could have addressed the majority’s concerns while protecting the integrity of the broadcast spectrum, maintaining a cohesive telecommunications policy, and, above all, honoring the Constitution.

JOHN D. DINGELL.  
ED MARKEY.  
FRANK PALLONE, Jr.  
LOIS CAPPS.  
RON KLINK.  
ELIOT L. ENGEL.  
TOM SAWYER.  
KAREN MCCARTHY.  
DIANA DEGETTE.  
ANNA G. ESHOO.  
SHERROD BROWN.

